

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

**J.B., Appellant**

**and**

**DEPARTMENT OF THE NAVY, FALLON  
NAVAL AIR STATION, Fallon, NV, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 08-2329  
Issued: July 8, 2009**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 25, 2008 appellant filed a timely appeal from September 27, 2007 and August 8, 2008 merit decisions of the Office of Workers' Compensation Programs terminating his compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether the Office met its burden of proof to terminate appellant's compensation effective September 27, 2007 on the grounds that he had no further employment-related disability; (2) whether the Office properly terminated his medical benefits; and (3) whether the Office properly denied appellant's request for subpoenas.

**FACTUAL HISTORY**

On May 27, 1997 appellant, then a 40-year-old meat cutter, filed an occupational disease claim alleging that he sustained mild left carpal tunnel syndrome and left cubital tunnel syndrome as a result of compensating for a right arm injury. The Office accepted appellant's

claim, assigned file number xxxxxx512, for left carpal tunnel syndrome and left cubital tunnel syndrome. Appellant underwent a left carpal tunnel release on October 7, 1997 and a left cubital tunnel release on April 6, 2000. He stopped work on February 26, 1996 and did not return.<sup>1</sup> The record indicates that the Office previously accepted that appellant sustained right epicondylitis, a right wrist strain and right cubital tunnel syndrome due to a January 3, 1992 employment injury, assigned file number xxxxxx946.

On April 14, 2006 Dr. James G. Reid, a Board-certified internist, evaluated appellant for increased neck pain radiating into the upper extremities. He diagnosed degenerative disc disease of the cervical spine, diabetes mellitus, hypothyroidism and a history of psychosis.<sup>2</sup> On June 5, 2006 Dr. Reid completed a work restriction evaluation. He found that appellant was totally disabled from work due to pain and weakness in the upper extremities.

On September 8, 2006 the Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Alice M. Martinson, a Board-certified orthopedic surgeon, for a second opinion examination. The statement of accepted facts described appellant's 1992 work injury under subsidiary file number xxxxxx946 of right epicondylitis and right wrist strain and his resulting injury of left carpal and cubital tunnel syndromes from overcompensating for the injury on his right side. The Office requested that Dr. Martinson determine whether appellant had any residuals of his accepted work injury.

In a report dated October 4, 2006, Dr. Martinson reviewed appellant's history of injury and the medical reports of record. She discussed his January 3, 1992 right arm injury and right carpal tunnel release on October 27, 1993 and right cubital tunnel release in 1995. Dr. Martinson reviewed in detail the medical evidence of record and noted that the most recent electromyogram (EMG) study obtained on August 29, 2002 was within the normal range. On examination she found full range of motion of the upper extremities and restricted motion of the cervical spine. Dr. Martinson determined that appellant had a negative Phalen's test and Tinel's sign bilaterally with no atrophy or loss of grip strength. She found "mild hypesthesia to light touch involving the ring and little fingers of both hands as well as some patchy hypesthesia along the ulnar border of the right forearm." Dr. Martinson diagnosed bilateral carpal tunnel syndrome status bilateral releases, bilateral cubital tunnel syndrome status post bilateral anterior transposition of the ulnar nerves, diabetes mellitus and psychosis by history. She opined that appellant's bilateral carpal tunnel and cubital tunnel syndromes were due to his employment and were "relieved by his surgical intervention and his most recent nerve conduction studies showed that all values had

---

<sup>1</sup> On March 27, 2000 the Office reduced appellant's compensation after finding that he had the capacity to earn wages as a surveillance systems monitor. On March 20, 2000 it granted him a schedule award for a 23 percent permanent impairment of each upper extremity. On October 4, 2000 a hearing representative reversed the March 27, 2000 loss of wage-earning capacity determination. By decision dated December 12, 2001, the Office again reduced appellant's compensation on the grounds that he had the capacity to work as a surveillance systems monitor. On November 8, 2002 a hearing representative vacated the December 12, 2001 decision and remanded the case for further development. On August 16, 2004 the Branch of Hearings and Review noted that the case was not in posture for an oral hearing as a prior hearing representative in a decision dated November 8, 2002 vacated the prior decision and found that appellant was entitled to benefits after the expiration of his schedule award.

<sup>2</sup> On September 10, 1999 appellant filed an emotional condition claim. The record indicates that the Office denied the claim, assigned file number xxxxxx488.

returned to the normal range.” Dr. Martinson asserted that he had no further residuals of his employment injury and required no further medical treatment. In a work restriction evaluation, she found that appellant was unable to perform his usual employment but could work for eight hours per day with restrictions. Dr. Martinson found that appellant could not perform any repetitive movements of the wrists and elbows and could push and pull only one hour per day. She further opined that appellant’s “apparent psychosis” prevented all employment.

On August 21, 2007 the Office notified appellant of its proposed termination of his compensation and authorization for medical benefits.<sup>3</sup> It found that Dr. Martinson’s opinion represented the weight of the evidence and established that he had no further residuals of his accepted work injury.

On August 31, 2007 the Office requested that Dr. Reid review and comment on Dr. Martinson’s report. In a progress report dated September 5, 2007, Dr. Reid noted that appellant continued to have pain in his upper extremities but was otherwise doing well. He diagnosed status postbilateral carpal tunnel syndrome with “persistent weakness and pain in the upper extremities.” In an accompanying narrative report also dated September 5, 2007, Dr. Reid noted that appellant complained of “intermittent pain and weakness in both upper extremities particularly the left upper extremities.” On examination he found moderate bilateral weakness of the wrists and stated, “In my opinion, [appellant] continues to have significant pain and weakness related to his previous bilateral carpal tunnel syndrome and certainly has shown no significant improvement over the past seven years. It would seem absurd to consider the possibility of him returning to gainful employment.” Dr. Reid discussed appellant’s history of psychosis with paranoid features dating to his work with the employing establishment and noted that his psychosis could be aggravated by the termination of his benefits.

By letter dated September 17, 2007, appellant challenged the termination of his benefits. He noted that the second opinion physician would not let him record the examination and concentrated on his lower back and legs instead of his arms.

By decision dated September 27, 2007, the Office terminated appellant’s compensation and authorization for medical benefits effective September 27, 2007.

On October 1, 2007 appellant requested an oral hearing. By letter received October 16, 2007, he requested that the hearing representative issue subpoenas for various individuals and for his medical records, time cards and work schedules. Appellant also asked for subpoenas for his congressional and senatorial representatives.

At a telephonic hearing, held on May 22, 2008, appellant related that he had permanent injuries to his arms due to his work injury. He contended that the hearing representative should have issued subpoenas for witnesses as requested. By decision dated August 8, 2008, the hearing representative affirmed the September 27, 2007 decision. He denied appellant’s request for subpoenas after finding that it would not assist in the resolution of the pertinent medical issue.

---

<sup>3</sup> The Office references an injury on April 15, 1994 in its proposed termination of compensation. It indicated that the accepted conditions were bilateral carpal tunnel syndrome and a left lesion of the ulnar nerve.

### LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.<sup>4</sup> The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>5</sup>

### ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for left carpal tunnel syndrome and left cubital tunnel syndrome due to compensating for a prior right hand injury. Appellant stopped work on February 26, 1996 and did not return. The Office further noted that he had a prior claim accepted for right wrist sprain, right epicondylitis and right cubital tunnel syndrome.

On September 8, 2006 the Office referred appellant to Dr. Martinson for a second opinion examination. The Board finds that Dr. Martinson's report is insufficient to show that he had no further employment-related condition or disability after September 27, 2007. On October 4, 2006 Dr. Martinson reviewed the history of injury and the medical reports of record. She noted that the most recent diagnostic studies of appellant's bilateral upper extremities were within normal limits. On clinical examination she found full range of motion of the upper extremities, no atrophy or loss of strength and a bilateral negative Phalen's test and Tinel's sign. Dr. Martinson diagnosed bilateral carpal tunnel syndrome status bilateral releases, bilateral cubital tunnel syndrome status bilateral releases, diabetes mellitus and psychosis. She opined that surgery had resolved appellant's carpal and cubital tunnel syndrome and concluded that he had no residuals of his accepted work injury. Dr. Martinson completed a work restriction evaluation, however, finding that he was unable to perform his usual employment but could work eight hours per day with restrictions. She found that appellant was unable to perform any repetitive work with his elbows or wrists and could push and pull only one hour per day. Dr. Martinson did not explain why she provided work restrictions prohibiting repetitive work movement. She did not address whether such restrictions were purely prophylactic in nature or for residuals of the work injury. As such, her opinion is insufficiently rationalized to support the Office's termination decision.<sup>6</sup>

---

<sup>4</sup> *Willa M. Frazier*, 55 ECAB 379 (2004); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>5</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>6</sup> The Board has held that a medical opinion not fortified by medical rationale is of little probative value. *Brenda L. DuBuque*, 55 ECAB 212 (2004).

**CONCLUSION**

The Board finds that the Office failed to meet its burden of proof to terminate appellant's compensation and authorization for medical treatment effective September 27, 2007 on the grounds that he had no further employment-related disability.<sup>7</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 8, 2008 and September 27, 2007 are reversed.

Issued: July 8, 2009  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>7</sup> In view of the Board's disposition of the merits, the issue of whether the hearing representative properly denied appellant's request for a subpoena is moot.